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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
14413RRUS01U / 22171.384

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Signature _____

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Application Number

10/025,543

Filed

December 18, 2001

First Named Inventor

Jerry L. Mizell et al.

Art Unit

2616

Examiner

Patel, Jay P

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☐ attorney or agent of record.
Registration number _____

☒ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 37,713

Signature

Brandi W. Sarfatis

Typed or printed name

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Telephone number

July 19, 2006

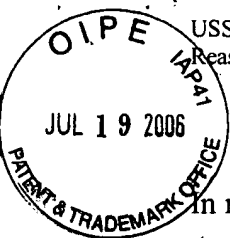
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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USSN 10/025,543

Reasons in Support of Pre-Appeal Brief Request for Review

Atty Docket No. 14413RRUS01U / 22171.384

Customer No. 27683

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Jerry L. MIZELL et al.

Serial No.: 10/025,543

Filed: December 18, 2001

For:

Node, Network and Method for Providing
Quality of Service Adjustments on a Per-
Application Basis

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Confirmation No. 8303

Group Art Unit: 2616

Examiner: Patel, Jay P.

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**REASONS IN SUPPORT OF
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

I. BACKGROUND

The present paper is being filed under the Official Gazette Notice of July 12, 2005 and in response to the Final Office Action mailed April 19, 2006.

A Notice of Appeal, with the proper fee, is being filed concurrently with this paper. It is assumed that no additional fees are required, but if any additional fees are required, the Commissioner is hereby authorized to charge any fees, including those for an extension of time, to Haynes and Boone, LLP's Deposit Account No. 08-1394.

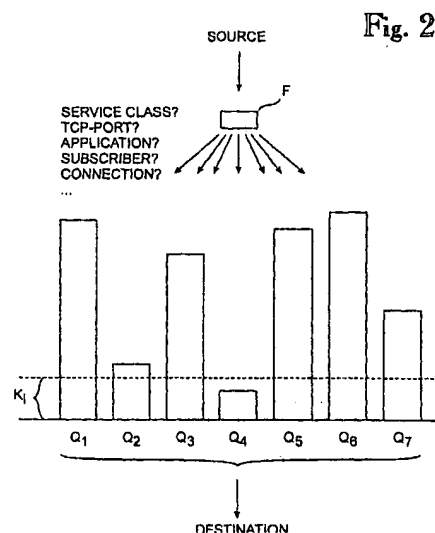
II. REASONS

In the final Office action mailed April 19, 2006, claims 1-16 were pending and under consideration. Claims 1-16 were rejected.

Independent claims 1, 6, and 12 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,603,738 to Kari et al. ("Kari"). It is respectfully submitted that there are clear errors with the Examiner's rejection. More specifically, and as described below, the rejection has clear legal deficiencies because the asserted prior art lacks essential elements needed to establish a prima facie rejection with respect to each claim. The PTO specifies in MPEP §2131 that, to anticipate a claim, a reference must teach each and every element recited in the claim.

1. "applying a service marking to the packet dependent on the application associated with the packet"

A first clear error is that the limitation of "applying a service marking to the packet dependent on the application associated with the packet" (independent claim 1) is missing from Kari. The Examiner has focused his argument that Kari anticipates this element on Kari's teaching, at column 5, lines 41-45, of assigning each packet to a queue dependent on an application associated with the packet. This concept is illustrated in Fig. 2 of Kari, which is reproduced below.



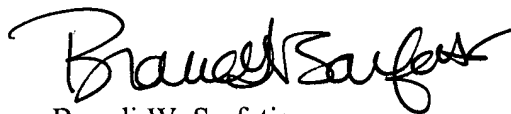
Applicants submit that the broadest reasonable interpretation of the above-noted limitation cannot be read to include assigning a packet to a queue dependent on an application associated therewith, as taught by Kari. Therefore, for this independent reason, claim 1 is not anticipated by Kari. Independent claim 12 includes a limitation similar in all relevant respects to the subject limitation included in claim 1; therefore, for this independent reason, claim 12 is also not anticipated by Kari.

2. “a table comprising an index including at least one key, each key having a record associated therewith, each record having a service marking therein, the node operable to interrogate the table with an identification of an application obtained from the packet, the service marking returned to the node upon a match between the identification and one of the keys”

A second clear error is that the limitation of “a table comprising an index including at least one key, each key having a record associated therewith, each record having a service marking therein, the node operable to interrogate the table with an identification of an application obtained from the packet, the service marking returned to the node upon a match between the identification and one of the keys” (independent claim 6) is missing from Kari. The Examiner has focused his argument that Kari anticipates this element on Kari’s teaching, at column 5, lines 36-38, of a GPRS register in which are stored parameters for identifying a GPRS subscriber. Contrary to the Examiner’s assertion, Kari’s GPRS register and parameters stored therein do not anticipate the subject limitation. As previously noted, the parameters stored in Kari’s GPRS register merely identify GPRS subscribers; they do not comprise a service marking returned responsive to a match between an application identification and an index key. Applicants submit that the broadest reasonable interpretation of the above-noted limitation cannot be read to include a GPRS register and parameters stored therein, as taught by Kari. Therefore, for this independent reason, claim 6 is not anticipated by Kari. Independent claim 12 includes a limitation similar in all relevant respects to the subject limitation included in claim 6; therefore, for this independent reason, claim 12 is also not anticipated by Kari.

Applicants have therefore shown two clear legal deficiencies in the Examiner's position. Consequently, the rejections are clearly not proper and without basis. It is therefore respectfully requested that the rejections be withdrawn.

Respectfully submitted,



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Date: July 19, 2006

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